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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1962

No. 668

THADDEUS B. TAYLOR,
Petitioner,

vs.

STATE OF MICHIGAN, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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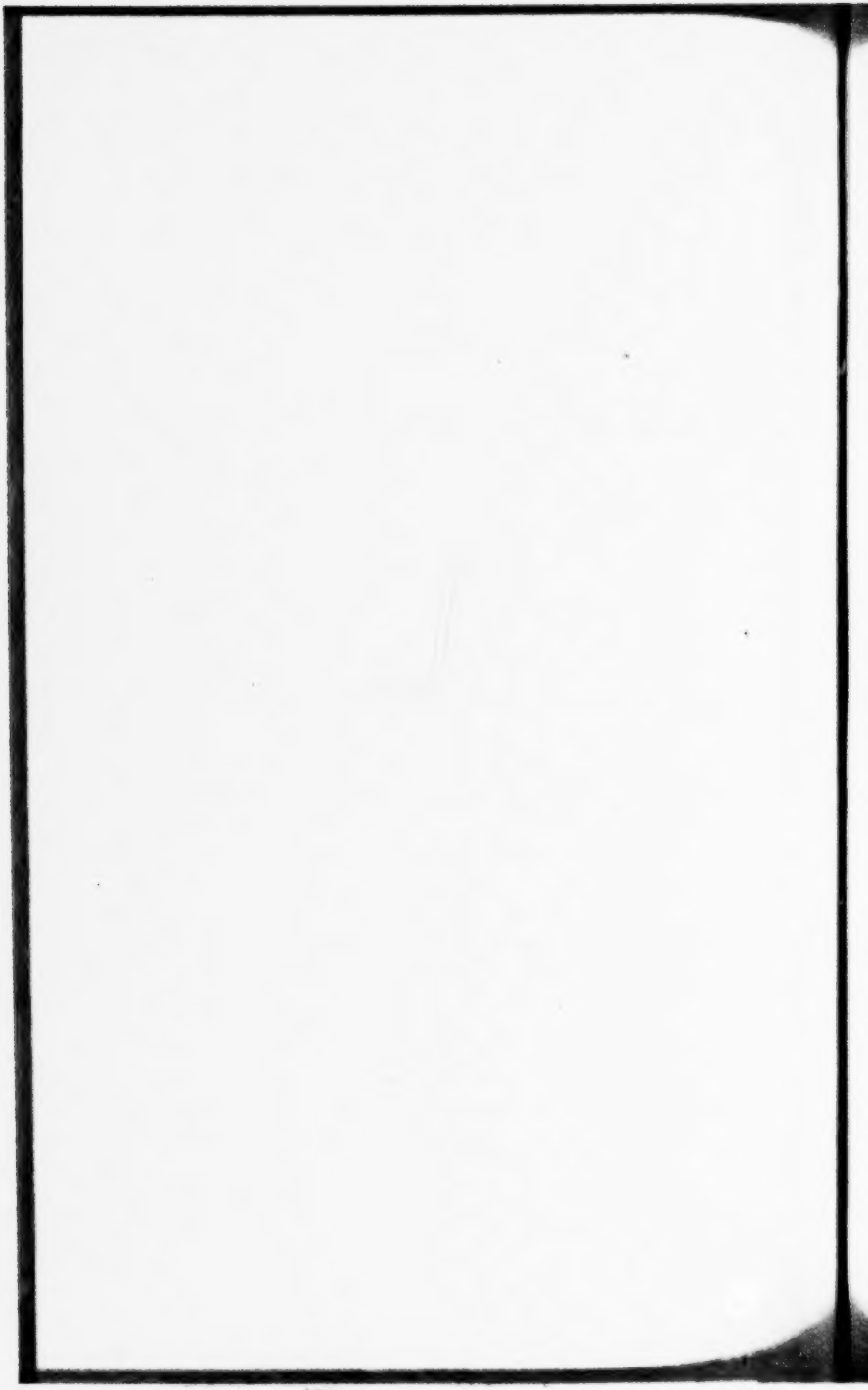

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions presented	2
Provisions of statute involved	3
Statement of case	3
Reasons for granting writ	5
Presentation	6
Conclusion	16

APPENDICES TO PETITION

		Page
Appendix A.	Article XIV, Sec. 1. Constitution of the United States	1a
Appendix B.	Article VI, Sec. 1. Michigan constitution 1850	1a
Appendix C.	Article XVI, Sec. 3. Michigan constitution 1908	1a
Appendix D.	Salary of Judge. Sec. 6, Act 49, P. A. 1875, C. L. 1948, 727.6; M. S. A. 27.3616	2a
Appendix E.	Jurisdiction of Court. Sec. 13, Act 49, P. A. 1875, C. L. 1948, 727.13; M. S. A. 27.3623	2a
Appendix F.	Powers of Court; service of writs. Sec. 14, P. A. 1875, C. L. 1948, 727.14; M. S. A. 27.3624	4a
Appendix G.	Practice and rules. Sec. 15, Act 49, P. A. 1948, C. L. 727.15; M. S. A. 27.3625	4a
Appendix H.	Appeals. Control by the Supreme Court. Sec. 17, Act 49, P. A. 1875, C. L. 1948, 727.17; M. S. A. 27.3627	5a
Appendix I.	Removal of causes from Circuit Court. Sec. 21, Act 49, P. A. 1875, C. L. 1948, 727.21; M. S. A. 27.3631	5a
Appendix J.	Change of Venue. Sec. 30, Act. 49, P. A. 1875, C. L. 1948, 727.30; M. S. A. 27.3640	7a
Appendix K.	Majority and dissenting opinions below	7a

Page

Appendix L. Judgment of court below reversing judgment of Court of Claims 30a
Appendix M. Order denying rehearing 31a
Appendix N. Certified copy of Federal constitutional questions presented below 32a

AUTHORITIES CITED

Cases

Page

Attorney General vs. Renihan, 184 Mich. 272 12

Coope vs. Arron, 358 U. S. 1 16

Davidow vs. Wadsworth Mnfg. Co., 211 Mich. 90 16

Hernandez vs. Texas, 347 U. S. 475 16
Haynes vs. Lapeer Circuit Judge, 201 Mich. 138 16
Hercules Iron Works vs. E. J. & E. Ry. Co., 141 Ill. Rep. 491; 30 N.E. 1050 13

In Re Phillips, 305 Mich. 636 16
In Re Fox Estate, 154 Mich. 5 16
In Re Nichols Will, 64 Okla. 241; 166 Pac. 1080, 1090 13

Murtha vs. Lindsay, 187 Mich. 79 13

National Association vs. State of Alabama, 357 U. S. 449 15
Nichols vs. Superior Court Judge, 130 Mich. 187 11

O'Donoghue vs. United States, 289 U. S. 516 14

Peninsula Stove Co. vs. Maston, 220 Mich. 284 16

Recorders Judge vs. Circuit Judge, 347 Mich. 567 12

Smith vs. Probate Judge, 231 Mich. 400 16
Smith vs. Cahoon, 283 U. S. 553 16
Southern Ry. Co. vs. Greene, 216 U. S. 400 16
Shelly vs. Kreamer, 334 U. S. 1 14
State vs. Sinnott, 89 Maine 41; 35 A. 1007, 1008 13

Truax vs. Corrigan, 257 U. S. 312 16

Wood vs. Adsit, 105 Mich. 378 9
Wyandotte Rolling Mills vs. Robertson, 34 Mich. 428..10, 12

COPY BOUND CLOSE IN CENTER

Constitutions and Statutes

	Page
Article XIV, Sec. 1, Constitution of United States	3, 5, 6
Article VI, Sec. 1, Michigan constitution 1850	3
Article XVI, Sec. 3, Michigan constitution 1908	3, 4, 5, 7, 8, 16
Article VII, Sec. 1, Michigan constitution 1908	10
Act 49, P. A. 1875, C. L. 1948, 727.1-727.35; M. S. A. 27.3611-27.3648	3, 5, 8, 10
Sec. 6, Act 49, P. A. 1875, C. L. 1948, 727.6; M. S. A. 27.3616	3, 5
Act 59, P. A. Michigan 1873	10

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THADDEUS B. TAYLOR,
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vs.

STATE OF MICHIGAN, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

Your petitioner respectfully prays that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of Michigan entered in the above entitled action.

OPINIONS BELOW

The decision of the Supreme Court of Michigan is reported as 367 Mich. 256, and it appears as (App. K; 7a) to this petition. Two opinions were filed. One to reverse and one to affirm the judgment of the court of claims.

"R" refers to printed record, the joint appendix below, nine copies of which are on file herein.
"A" refers to appendices to this petition.
"C. L." refers to Michigan Compiled Laws.
"M. S. A." refers to Michigan Statutes Annotated.
Emphasis in petition is ours.

JURISDICTION

The majority and dissenting opinions of the Michigan Supreme Court were filed September 7, 1962. Judgment of the court was entered September 7, 1962 (App. L; 30a). A timely application for a rehearing was filed and denied November 5, 1962 (App. M; 31a). The jurisdiction of this court is invoked under 28 *U. S. C.*, Sec. 1257 (3), since the validity of the judgment of the court below is drawn in question and that the plaintiff has been denied equal protection thereby, which is repugnant to Article XIV, Sec. 1 of the *Constitution of the United States.*

QUESTIONS INVOLVED

1. Is the judge of the Superior Court of Grand Rapids of the same judicial class as the circuit judges, in the administration of law in the State of Michigan?

The answer of the trial judge was "yes."
The Michigan Supreme Court did not hold to the contrary.

2. Can an exemption or privilege granted by the Constitution of the State of Michigan to the Circuit Judges as in Article XVI, Sec. 3, be denied to another judge who is equally of the same class, when such judge is not specifically named in the immunity or exemption, without violating Sec. 1, Article XIV of the Constitution of the United States?

3. Was the holding of the majority opinion in the court below in violation of Sec. 1, Article XIV of the Constitution of the United States, that holding being a judicially enforced exclusion of the plaintiff from the benefits of a constitutional grant of immunity, from the restrictive provisions of Article XVI, Sec. 3 of the Michigan Constitution, to a class of which the plaintiff was a member?

4. Can the Michigan Supreme Court by its decision which is claimed to be based on state law as distinguished from Federal law, the force and effect of which decision is to deny to the plaintiff, the same and equal benefits

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given to a class of which the plaintiff was a member, without violating the guaranty of Sec. 1, Article XIV of the Constitution of the United States, and the decisions of this court, that all members of the same class must be treated alike?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Article XIV, Sec. 1. The Constitution of the United States.
2. Article VI, Sec. 1. Michigan Constitution of 1850.
3. Article XVI, Sec. 3. Michigan Constitution of 1908.

STATUTES

1. Act 49, P. A. 1875, of Michigan, being C. L. 1948, 727.1-727.35 M. S. A. 27.3611-27.3648

STATEMENT OF THE CASE

The Superior Court of Grand Rapids was created by virtue of Act 49, *P. A.* 1875, *C. L.* 1948, 727.1-727.35, *M. S. A.* 27.3611-27.3648. This was in pursuance of the authority vested in the legislature by Article 6, Sec. 1 of the Michigan Constitution of 1850 (App. B; 1a).

The plaintiff was the duly elected and serving judge of said court from November 12, 1932 to May 4, 1959, when he retired having attained the age of more than seventy years. The elective terms are for six years. The Circuit Judges and the Judge of Superior Court are elected at the same primary and general election.

The annual salary to be paid to the judge of said court was fixed by Sec. 6, *C. L.* 1948, 727.6; *M. S. A.* 27.3616 (App. D; 2a) which provided as follows:

> "The judge of said Superior Court shall receive from the treasury of the State of Michigan the same annual salary as may be payable to Circuit Judges" • • •.

The above provision of law has never been changed and is effective at this time, eighty seven years later.

The salary to be paid to the Circuit Judges is fixed by Sec. 602.58, *C. L.* 1948; *M. S. A.* 27A555, Revised Judicature Act of 1961.

By successive legislative amendments the annual salary of circuit judges was increased from $6000.00 in 1941 to $7000.00; in 1949 to $9000.00; and in 1954 to $12,500.00. The defendant's administrative officers refused to pay to the plaintiff beginning with the effective date of said amendatory acts "the same annual salary as was paid to circuit judges (R. 15a)." This refusal was based upon the claim that to pay to the plaintiff the same annual salary would in effect be in violation of Article 16, Section 3 of the *Michigan Constitution* (App. C; 1a) in that an increase in plaintiff's salary would thereby occur in term.

From 1941 to May 4, 1959, the end of plaintiff's term, the State of Michigan therefore paid to the plaintiff $28,977.47 less than was paid to the circuit judges during said period (R. 15a). It was for this sum that a claim was filed in the Michigan Court of Claims, wherein and upon hearing the trial judge entered judgment for the plaintiff of $39,190.58 (R. 104a). From this judgment the defendant appealed to the Michigan Supreme Court. The case was presented January 3, 1962, and on September 7, 1962, the court by a divided opinion reversed the judgment of the Court of Claims and ordered said judgment set aside (App. K; 7a) Plaintiff made application for rehearing which was denied November 5, 1962 (App. M; 31a).

Plaintiff in the brief filed in the court below under "Questions Involved" submitted to the court for consideration, involving Federal law, 3 questions (App. N; 32a). In particular, it was the claim of the plaintiff that the Superior Court of Grand Rapids and the Judge of said court were of the same judicial class as the Circuit Court and Circuit Judges, and being so that the judge of said court was thereby included within any immunity, grant or privilege given to the circuit judges by the exception of Article 16, Sec. 3 of the *Constitution of the State of Michigan* (App. C; 1a).

Plaintiff claimed that a denial to the plaintiff on the basis of any asserted defense of the defendant would be a denial to the plaintiff of equal protection within the mean-

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ing of Article XIV, Sec. 1 of the *Constitution of the United States* and therefore would be in violation of said Article.

Plaintiff further claimed that no "express authoritative enactment" had at any time been passed during term which had increased the salary to a greater sum than the sum provided in Sec. 6, to-wit: "The same annual salary as may be payable to Circuit Judges."

The trial judge (R. 76a) and the minority opinion in the court below held that no salary could be paid to the judge of Superior Court except by the operation and effect of Sec. 6 of Act 49, *P. A.* 1875, C. L. 1948, 727.6, *M. S. A.* 27.3616 and that by authority of that Act alone was the treasurer of the State of Michigan authorized to pay a salary to the Judge of Superior Court and held that a statute which fixed a public officer's salary at the time of his election, if such law fixes a sum, or a standard or basis of computation whereby compensation may vary in amount during term was not in violation of Article 16, Sec. 3 of the *Michigan Constitution* (App. C; 1a), and held that the judgment of the court of claims awarding to plaintiff the salary unpaid to him should be affirmed.

The trial judge found and determined that the judge of the Superior Court was of the same judicial class as the Circuit Judges (R. 71a, 77a). The majority opinion of the court below does not hold to the contrary.

REASONS FOR GRANTING THE WRIT

1. A personal federal right has been denied the plaintiff.
2. The precise questions in this petition have never before been presented to this court. This results from the immunity ("except circuit judges") granted to the Circuit Judges of Michigan in Article 16, Sec. 3 of the *Michigan Constitution,* which is unique, in that our search has not disclosed a like exemption in the Constitution of any other State (App. C; 1a).
3. By the force and effect of Act 49, *P. A.* 1875 and subsequent legislative acts the Superior Court of Grand Rapids and the judges thereof are made a part and member of the same judicial class as the Circuit Courts

and Circuit Judges, in the administration of law in the State of Michigan.

4. The Michigan Supreme Court in its decisions has declared that the Superior Court of Grand Rapids and Courts of similar creation, by virtue of the same constitutional provision, are of the same class as the Circuit Courts.

5. The Michigan Supreme Court has declared that courts having powers and jurisdictions similar to the Superior Court of Grand Rapids were State Courts, the judges State officers, and that its judges exercised the powers of a Circuit Judge.

6. The majority opinion is in conflict with Article XIV, Sec. 1 of the *Constitution of the United States* and with the highest courts of other states, while the minority opinion is in accord with such decisions. The majority opinion is without any fair or substantial support. There is not cited a single authoritative judicial decision upon like or similar facts of any court, either state or federal, to support its conclusions. The majority opinion did not find or state that any legislative act had been passed fixing the salary of the judge of the Superior Court which was in conflict with the *Constitution of the State of Michigan,* nor did the majority opinion "lay its finger" upon an "express authoritative enactment" increasing the salary of the judge of Superior Court which was prohibited by the *Constitution of the State of Michigan.*

7. The Attorney General of the State of Michigan admits that no legislative act fixing the salary of the Judge of Superior Court has been passed, which the *Constitution of the State of Michigan* prohibits.

PRESENTATION

The right of the plaintiff not to be discriminated against was a personal federal right. This right was specifically set up in the original claim filed in the Michigan Court of Claims (R. 8a, 9a, 12a, 25a). It was specifically submitted to the Michigan Supreme Court in the brief of the plaintiff

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erein (App. N; 32a). It therefore affirmatively ap-
hat not only was a federal question presented for
n, but that decision thereon was necessary for a
ination of the case, and could not be disposed of
upon other grounds. This plaintiff has complied
e rule of necessity as stated by this court. *Ward*
e County, 253 U. S. 17, page 22.

Eustis vs. Bolles, 150 U. S. 361;
Leathe vs. Thomas, 207 U. S. 93, page 98.

Vard vs. Love County, supra, this court stated, page
U. S.:

"Whether the right was denied or not given due
cognition by the Supreme Court is a question as to
hich the claimants were entitled to invoke our judg-
ent, and this they have done in an appropriate way. It
erefore is within our province to inquire not only
hether the right was denied in express terms, but
so whether it was denied in substance and effect,
by putting forward non-federal grounds of decision,
at were without any fair or substantial support."

majority opinion of the court below is without any
r substantial support." The opinion disregards ad-
ed cases of long standing which support the claim
plaintiff. The majority opinion disregards the rule
igan as it exists. And in so refusing the majority
does not bring forward *a single adjudicated case*
same or similar facts to support its opinion. Against
ilure the minority opinion with citation of author-
correctly stated the rule of law, as applicable to
ts in this cause.

court therefore properly may and should take juris-
of this cause. The court below refused to pass
timely alleged and submitted question of "equal
ion." In deciding the cause on other grounds the
y its action excluded the plaintiff from the benefits
l to a judicial class of which the plaintiff was a
r. Such action of the court below is of itself a
of "equal protection." The plaintiff has not claimed
e classification of circuit judges in Article 16, Sec.

3 of the *Michigan Constitution* is in violation of the *Federal Constitution*. That question was not necessary to a determination of the cause. Plaintiff's claim was that he as Judge of the Superior Court was a judicial officer of the State of Michigan of the same class as the circuit judges and that any immunity, grant, privilege or benefit accruing to the circuit judges by virtue of the exception (except circuit judges) in Article 16, Section 3 of the *Michigan Constitution* (App. C; 1a) could not be denied to the plaintiff who was equally of the same class.

The evidence to support this claim of the plaintiff is found in the legislative act creating the Superior Court, in subsequent legislative enactments and in the decisions of the Michigan Supreme Court.

The words "of the same class" have been construed by the court below and this court to mean in substance "groups of persons engaged in the same character of work or having common characteristics or attributes."

The intent of the Michigan legislature to create a court of the same class as the circuit courts found expression in Act 49, *P. A.* 1875, *C. L.* 1948, 727.1-727.35; *M. S. A.* 27.3611-27.3648. The authority to create the court was given by Article 6, Sec. 1 of the *Constitution* of 1850 (App. B; 1a).

Therein, the legislature directed, as to the Superior Court:

1. It should be a court of record.
2. Circuit judges could be assigned to sit in the court.
3. The judge was to be paid by the state "the same annual salary as may be payable to circuit judges" (App. D; 2a).
4. The same filing fees are to be paid in each court. *M. S. A.* 27A 2528 Revised Judicature Act 1961.
5. The jurisdiction in civil actions was made concurrent with the circuit court of Kent County and exclusive jurisdiction as to criminal cases (App. E; 2a).

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6. The court was given power to issue all writs and processes and to do all acts which the circuit courts of the state in like cases could do (App. F; 4a).

7. The practice and proceedings are the same as in circuit courts (App. G; 4a).

8. There are four annual terms, the same as in circuit courts.

9. Appeals from the Superior Court are the same as from the circuit courts to the Supreme Court (App. H; 5a).

10. The Court is subject to the rules and control of the Supreme Court, the same as the Circuit courts (App. G; 4a).

11. Civil cases either law or equity, commenced in the Circuit Court of Kent County may be removed to the Superior Court if either party is a resident of the City of Grand Rapids (App. I; 5a). (It is the only court in Michigan exercising this power (R. 75a). Approved by Michigan Supreme Court in *Wood vs. Adsit*, 105 Mich. 378).

12. Process of the Superior Court may be served any place in the State of Michigan that process of the Circuit Court of Kent County may by law be served (App. F; 4a).

Denison vs. Smith, 33 Mich. 155, page 159.

13. The Kent County jury commission is appointed by the Governor upon recommendation of the Judge of Superior Court and Circuit Judges of Kent County. This commission selects the jurors for service in both courts.

Act 505, *Local Acts* 1903, Michigan.

14. The fees of jurors who serve in the Superior Court are paid by Kent County as are Circuit Court jurors.

15. The judge of the Superior Court is given the same authority to sit in grand jury proceedings as a Circuit judge.

C. L. 1948, 767.3; *M. S. A.* 28.943.

In the judicial process the judgments, orders and decrees of the Superior Court are of the same effect and enforceable in the same manner as are those of the circuit courts and by virtue of the same laws and rules. By the provisions of Article 7, Sec. 1 of the *Michigan Constitution* of 1908, the words "municipal courts" could now be omitted from Act 49, *P. A.* 1875.

ARTICLE VII.

Judicial Department

JUDICIAL POWER. Sec. 1. The judicial power shall be vested in one supreme court, circuit courts, probate courts, justices of the peace and such other courts of civil and criminal jurisdiction, inferior to the supreme court, as the legislature may establish by general law, by a two-thirds vote of the members elected to each house.

The Superior Court is a Constitutional court created by express authority of the *Constitution* of 1850 (App. B; 1a). The Michigan Supreme Court has declared the Superior Court and courts created by the same Constitutional authority to be of the same judicial class as a circuit court.

In 1873 by authority of the same Constitutional provision the legislature created the Superior Court of Detroit, Act 59, *P. A.* 1873. That Act contained 22 sections. Two years later in nearly identical provisions and in 22 sections the legislature created the Superior Court of Grand Rapids. Speaking of the Superior Court of Detroit, the Michigan Supreme Court said: *Wyandotte Rolling Mills vs. Robertson,* 34 Mich. 428, page 429

> "For many years it has been the clear policy of the state to secure uniformity in all tribunals *of the same class* in all substantial matters of practice, and this is discoverable not only in legislation but in the Constitution. As promotive of this policy and to erect a

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guard against the discordance to be naturally expected if each tribunal were left to establish its own code of rules, it was ordained by the constitution that one tribunal, and that, the court of last resort, should by general rules establish, modify and amend the practice in the circuit courts. Art. VI, Sec 5. The same idea has been often and in various ways acted upon by the legislature, and in many instances the end has been achieved by specific regulations on particular points. Among the provisions giving power to the Supreme Court to make rules for the circuit courts and other courts *of the same class,* like the Superior court of Detroit, we cite the following: (citing sections of C. L. 1871) * * *."

Page 431:

"In regard to the jurisdiction, so far as it goes, and the general right to employ the means necessary to effectuate it, the law places the Superior Court on the same footing with the circuit courts."

Page 432:

"As respects civil jurisdiction the superior court is a tribunal of the same class as the circuit courts. There are no limitations upon its powers, or any enactments affecting its action, to impeach the analogy necessary for our present purpose. The nature of the subjects of its jurisdiction, so far as the jurisdiction extends, is the same. It is a court of original jurisdiction, proceeding according to the course of the common law. It is a court of record, and cases are removable from it to this court by writ of error and appeal as from the circuit courts."

Every word of the above quotation applies to the Superior Court of Grand Rapids, and was quoted in the following case.

In *Nichols vs. Superior Court Judge* (1902), 130 Mich. 187, pages 191-192, in this case the court construed the act creating the Superior Court of Grand Rapids, page 191. "The act gives such court original and exclusive

jurisdiction over all criminal proceedings committed within the corporate limits of the city, with certain exceptions, and power to issue all lawful writs and process, and to do all lawful acts, which may be necessary and proper to carry into complete effect the powers and jurisdiction given by this act, and especially to issue all writs and process, and to do all acts which the circuit courts of this State, within their respective jurisdictions, may in like cases issue and do by the laws of the State of Michigan. Under this law the Superior Court is subject only to the control of the Supreme Court. It is governed by the same rules of practice as the circuit courts. Appeals are taken from it to the Supreme Court. In short, it is subject to the mandate of this court in precisely the same manner and to the same degree that the circuit courts are.

This act is similar in its provisions to the act establishing the Superior Court of Detroit. This court held that: (The court then cites the quotation above from *Wyandotte Rolling Mills vs. Robinson*), and on page 197, "it (the legislature) did choose to give it all the powers which were conferred by the Constitution upon the circuit courts in all those matters entrusted to its jurisdiction."

Attorney General vs. Renihan, 184 Mich. 272.

In this case the court was construing Article 7, Secs. 1-17 and Sec. 20 of the *Michigan Constitution* of 1908 as to the power of appointment of a judge of Superior Court to fill a vacancy. Page 279, the court queried, "In naming certain courts in Sec. 17 that should be courts of record, did they intend to exclude from that class which had been or might be created by the legislature, when by Sec. 1 it had been declared that the judicial power should be vested in certain named courts and such other courts of civil and criminal jurisdiction inferior to the Supreme Court as the legislature may establish by law. To ask the question is to answer it in the negative," and on page 280, "The judge is a State officer."

In *Recorders Judge vs. Circuit Judge*, 347 Mich. 567. The Circuit Court in this case attempted to review a proceeding in the Recorders Court. The Supreme Court issued a writ of prohibition, stating, quoting from, *Detroit vs. Wayne Circuit Judge*, 233 Mich. 356, 358:

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"The Recorders Court of Detroit was created in 1857 to succeed the Mayor's Court. In addition to its local municipal jurisdiction it was given exclusive and original jurisdiction of all state criminal cases arising within the corporate limits of the city and in the exercise of this jurisdiction it was vested with all the powers of a circuit court. It follows that in respect to its jurisdiction over state criminal cases it is not inferior to the circuit courts."

Murtha vs. Lindsay, 187 Mich. 79, page 82:

"The Recorders court is when exercising jurisdiction to try persons accused of crime under the general laws of the state, a state court, its judges exercising the powers of circuit judges."

By virtue of the foregoing cases the Michigan Supreme Court has held beyond question that the Superior Court of Grand Rapids is of the same judicial class as the Circuit Courts of Michigan.

The act creating the Superior Court of Grand Rapids directs that it shall have concurrent jurisdiction in all civil cases, with the Circuit Court of Kent County. Having concurrent jurisdiction, it is a court of the same class engaged in the same judicial work. Concurrent jurisdiction means "equal jurisdiction," a jurisdiction of several different tribunals, each authorized to deal with the same subject matter.

State vs. Sinnott, 89 Maine 35, 41 A. 1007-1008);
In re Nichols Will, 166 P. 1087, 1090, 64 Okla. 241.

In the case of *Hercules Iron Works vs. E. J. & E. Ry. Co.*, 141 Ill. Rep. 491, 30 N.E. 1050, the Illinois Supreme Court discusses concurrent jurisdiction as between a city court and the circuit courts. The court held that the legislative act had given to the courts the dignity and power of circuit courts and that the judges were to perform all duties imposed upon circuit judges and on page 498 the court defines concurrent jurisdiction.

The right of "equal protection" has been stated by this court in many cases. Therein this court has laid down

certain general principles. For a summary applicable hereto we draw upon the court's opinion in *Shelly vs. Kraemer*, 334 U. S. 1, page 14:

> "That the action of State courts and judicial officers in their official capacities is to be regarded as the action of the state within the meaning of 14th Amendment is a proposition which has long been established by this court."

Page 20:

> "State action as that phrase is understood for the purposes of the 14th Amendment refers to exertions of the state power in all forms and when that action is to deny rights subject to the protection of the 14th Amendment, it is the obligation of this court to enforce Constitutional demands."

Page 21:

> "Only recently this court had occasion to declare that a state law which denied equal enjoyment of property rights to a designated class of citizens of race and ancestry was not a legitimate exercise of the state police power but violated the guaranty of the equal protection of the laws! Oyama v. California, 332 U. S. 633. Nor may the discriminations imposed by the state courts in these cases be justified as proper exertion of state police power."

Page 23:

> "When however it is clear that the action of the state violates the fundamental charter it is the obligation of this court so to declare."

O'Donoghue vs. United States, 289 U. S. 516, 53 S. Ct. 740, 77 L. ed. 1356.

In the foregoing case this court construed the question of a reduction in the salaries of the Judges of the Supreme Court and the Court of Appeals in the District of Columbia. The court held that those courts were within the protective

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provisions of Article 3, Sec. 1 of the *Constitution of the United States* and that their salaries could not be diminished during their term of office. The court, page 549 of 289 U. S., stated:

> "Indeed the Congressional practice from the beginning recognizes a complete parallelism between the courts of the District and the District and Circuit Courts of Appeal of the United States."

Likewise the Michigan legislature has since 1875 and the decisions of the Supreme Court cited herein, have recognized the "complete parallelism" between the Superior Court of Grand Rapids and the Circuit Courts. It is the only court in the State of Michigan which exercises civil and criminal jurisdiction and powers concurrent with the circuit courts (R. 75a). Courts are classified according to their jurisdiction and the powers exercised and not by their name (R. 75a). The Probate Courts of Michigan are comparable to the Surrogate Courts of other states and the circuit courts to the superior courts and county courts of other states.

Should the defendant in this cause deny that this court has jurisdiction by claiming the determination of the Michigan Supreme Court was on an independent non-federal ground, we would direct the court's attention to

> *National Association vs. State of Alabama* (1928), 337 U. S. 449, 78 S. Ct. 1163

> "Respondent recognizes that our jurisdiction is not defeated if the non-federal grounds relied upon by the state court is without any fair or substantial support, *Ward v. Board of County Commissioners*, 253 U. S. 17, 22. It becomes our duty to ascertain, in order that Constitutional guarantees may be appropriately enforced, whether the asserted non-federal ground independently and adequately supports the judgment."

The decision of the Michigan Supreme Court, based on non-federal grounds, is by virtue of the force and effect of its judgment in violation of the 14th Amendment, Sec.

1. It is a judicially enforced exclusion of the plaintiff from the benefits of a privilege granted to a class of which he was a member. The Michigan Supreme Court has in many cases stated that the Constitutional rule of equality and uniformity is only complied with when all members of the same class are treated alike.

In Re Fox Estate, 154 Mich. 5;
Haynes vs. Lapeer Circuit Judge, 201 Mich. 138;
Peninsula Stove Co. vs. Maston, 220 Mich. 284;
Davidow vs. Wadsworth Mfg. Co., 211 Mich. 90;
Smith vs. Probate Judge, 231 Mich. 409;
In re Phillips, 305 Mich. 636.

The classification of circuit judges in Article 16, Sec. 3 of the *Michigan Constitution* was not in the exercise of the police power of the state. It does not rest upon the protection of the public welfare, safety, public health or morals.

The subject of "Equal protection" has been so frequently the subject of this court's opinion as to suggest a minimum of citation. The following will suffice:

Southern R. Co. vs. Greene, 216 U. S. 400;
Truax vs. Corrigan, 257 U. S. 312;
Smith vs. Cahoon, 283 U. S. 553;
Coope vs. Arron, 358 U. S. 1;
Hernandez vs. Texas, 347 U. S. 475.

The plaintiff in this cause, after serving for nearly twenty-seven years as a trial judge, recognizes the desirability of brevity.

IN CONCLUSION

We ask this Court to take jurisdiction. Aside from the question of "Equal protection" the record in this case discloses that the State of Michigan, disregarding the provisions expressly directing the payment to the plaintiff of "The same annual salary as may be payable to circuit judges" did in fact refuse to pay to the plaintiff that salary for nearly fourteen of the seventeen years covered by the judgment of the trial court. In those years the defendant will not deny that the plaintiff carried in nearly

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every year a greater case load than any circuit judge of Michigan and never less than second.

The trial judge, who since the rendering of his opinion in this case, has been appointed to and is presently serving as Judge of the United States District Court for the Western District of Michigan, in a thoroughly reasoned and studied opinion in concluding, stated (R. 77a):

> "All Justice, all equity, all law and particularly the true spirit of the law, conspire against a strict construction of Article 16, Sec. 3 so as to exclude a judge from its benefits who presides over court, in fact and in law of the generic classification of a circuit court."

We respectfully submit this, our petition for a Writ of Certiorari.

FRED ROLAND ALLABEN,
Counsel for Petitioner.
Business Address:
408 Federal Square Building,
Grand Rapids 2, Michigan.

APPENDIX

APPENDIX A

PROVISION OF FEDERAL CONSTITUTION INVOLVED

Article XIV.

Sec. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B

PROVISION OF MICHIGAN CONSTITUTION OF 1850

Article VI.

Sec. 1. The judicial power is vested in one supreme court, in circuit courts, in probate courts, and in justices of the peace. Municipal courts of civil and criminal jurisdiction may be established by the legislature in cities.

APPENDIX C

PROVISION OF MICHIGAN CONSTITUTION OF 1908

Article XVI.

Sec. 3. Neither the legislature nor any municipal authority shall grant or authorize extra compensation to any public officer, agent, employe or contractor after the service has been rendered or the contract entered into. Salaries of public officers, except circuit judges, shall not be increased nor shall the salary of any public officer be decreased, after election or appointment.

APPENDIX D

PROVISIONS OF MICHIGAN STATUTES INVOLVED

Act 49 P. A. 1875. C. L. 1948 727.1-727.35 M. S. A. 27.3611-27.3648. Sec. 6 C. L. 1948 727.1-727.35. M. S. A. 27.3616. SALARY. The judge of said superior court shall receive from the treasury of the state of Michigan the same annual salary as may be payable to circuit judges, and payable (in the same manner as are circuit judges. The judge of said court may receive such additional sum as the city commission of Grand Rapids may provide, to be paid by said city in the same manner as are city officers).

APPENDIX E

JURISDICTION OF COURT; CONCURRENT; EXCLUSIVE; APPELLATE.

Sec. 13, C. L. 1948, 727.13, M. S. A. 27.3623. The said superior court shall have original jurisdiction and concurrent jurisdiction with the circuit court for the county of Kent, in all civil actions of a transitory nature, when the debt or damage claimed is over one hundred (100) dollars in which both parties reside in the city of Grand Rapids; or in which the plaintiff or the defendant resides in the city of Grand Rapids, and service of a copy of the declaration or process by which suit is begun shall be had within said city; or in which the plaintiffs, or one of them, if there be more than one, reside in said city, and the defendants, or one of them, if there be more than one, shall be served with a copy of the declaration, or with process in said city. Said court shall also have such jurisdiction of all actions of trespass upon lands situate in the city of Grand Rapids; of all actions of ejectment for lands in said city; of suits begun by writ of attachment against non-residents, if the property attached is in the corporate limits of said city when the writ is sued out, of all equity suits in which both parties are residents of said city, or in which either party is a resident of said city, or in which the complainant or defendant shall be resident of said

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city, or in which the subject matter of such suit is situate in said city; of all foreclosure suits of land situate in said city. And said superior court shall have exclusive jurisdiction of all actions of a civil nature at law or in equity, which may be brought by or against the board of education of said city, or by or against the said city or any of its officers; and shall have exclusive appellate jurisdiction, where appeals may be made of all cases originally commenced and prosecuted in the police court of Grand Rapids, where a final judgment shall be rendered by police court in cases arising out of the breach of any provision of the charter or ordinances of said city; and exclusive original jurisdiction to issue writs of certiorari in such cases tried and determined in said police court, and determine the same, when it may be lawfully done. All the jurisdiction conferred upon a recorder's court of said city by Title VI and VII of the revised charter of the said city, and the acts amendatory thereto, is transferred to and vested in the said superior court. Said superior court shall also have original and exclusive jurisdiction of all prosecutions and proceedings in behalf of the people of this state and committed within the corporate limits of the city of Grand Rapids, except in cases exclusively cognizable by the police court or the justices of the peace of said city, and shall have power to issue all lawful writs and process, and to do all lawful acts which may be necessary and proper to carry into complete effect the powers and jurisdiction given by this act, and especially to issue all writs and process, and to do all acts which the circuit courts of this state, within their respective jurisdictions, may in like cases issue and do by the laws of this state; Provided, That this act shall not in any way affect the jurisdiction of the circuit court for the county of Kent over any case pending in said court when this act shall take effect, nor the validity of any recognizance heretofore made to said court; and the prosecuting attorney for the county of Kent shall appear and act for the people of the state of Michigan, in said superior court, in all cases arising under the laws of this state. All indictments for offenses committed within the limits of the city of Grand Rapids which may be found and presented to the circuit court for the county of Kent, by the grand jury of said county, shall be forthwith certi-

fied and transmitted by the clerk of the circuit court to said superior court, and thereupon said superior court shall have as full and complete jurisdiction of said indictments as if the same had been originally presented to said superior court, and shall have full power to take all further proceedings thereon.

APPENDIX F

POWERS OF COURT; SERVICE OF WRITS AND PROCESS OUTSIDE CITY

Sec. 14. C. L. 1948, 727.14, M. S. A. 27.3624. Said court shall have power to issue all lawful writs and process, and to do all lawful acts which may be necessary and proper to carry into complete effect the powers and jurisdiction given by this act, and especially to issue all writs and process, and to do all acts which the circuit courts of this state within their respective jurisdictions may in like cases issue and do, by the laws of the state of Michigan. All copies of declarations filed for commencement of suit, writs of subpoena, all writs of execution, and other writs of process, may be served beyond the limits of said city, which may in like cases be filed in the circuit court, and authorized by law to be served outside the limits of the county.

APPENDIX G

PRACTICE AND RULES

Sec. 15. C. L. 1948, 727.15, M. S. A. 27.3625. The practice and proceedings in said superior court shall be the same as those prescribed by law for the circuit courts of this state, unless otherwise limited by this act; and the rules prescribed by the supreme court for the guidance and practice of the circuit courts shall be the rules of said superior court, so far as the same may be applicable, but the said court may have the same power for making rules for said court as is given to the circuit courts or the judges thereof.

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APPENDIX H

APPEALS; CONTROL BY SUPREME COURT

Sec. 17. C. L. 1948, 727.15, M. S. A. 27.3627. Any complainant or defendant in any cause in equity, who may think himself aggrieved by any decision, decree, or order made therein by said superior court, may appeal therefrom to the supreme court; such appeal may be taken in such like cases, and the proceedings on appeal shall be similar in all respects to those prescribed by statute in cases of appeals from circuit courts; and the supreme court may issue all writs of error, certiorari, prohibition, mandamus, and other writs directed to the said superior court or the judge thereof; as it may issue and direct to the circuit courts or the judge thereof; and shall have like superintending control over the said superior court as is given by the constitution or by law to the supreme court over said circuit courts.

APPENDIX I

REMOVAL OF CAUSE FROM CIRCUIT COURT; BOND; STAY OF PROCEEDINGS

Sec. 21 C. L. 1948, 727.21, M. S. A. 27.3631. If either party to any cause now pending in the circuit court for the county of Kent, either at law or in chancery, and within the jurisdiction of said superior court, shall, after the taking effect of this act, or if the defendant in the case of a suit within such jurisdiction hereafter commenced, at the time of entering his appearance in said circuit court, shall file with the clerk or register of said court a petition for the removal of the cause into the said superior court for the city of Grand Rapids, and shall at the same time file with the clerk or register of said circuit court, a bond to the opposite party, with sufficient surety, to be approved by a judge of said circuit court, or the circuit court commissioner of said county of Kent; and in such sum as such judge or commissioner shall direct, conditioned for the entering in said superior court, within ten (10) days, of the date of filing such petition, copies

of all papers filed and proceedings had in said cause in said circuit court, and also for his there appearing and entering special bail in the cause if special bail was originally requisite therein; and upon filing of said petition and bond, it shall thereupon be the duty of said circuit court for the county of Kent to proceed no further in the cause, and no order of said circuit court for the removal of said cause shall be requisite; and the filing of said petition and bond shall operate as a stay of all proceedings in said circuit court in said cause for said ten (10) days; and thereafter provided said cause is removed, otherwise not; but such stay shall not affect the running of any period of time provided by statute or rule for the filing of any pleading or the taking of any other proceedings by the defendant; and any bail that shall have been originally taken shall not be discharged; and the copies of said papers and proceedings being so entered and filed as aforesaid in such superior court, the cause shall then proceed in the same manner as if it had originally been brought in said court, and any attachment of the goods or estate of the defendants by the original process shall hold the goods or estate so attached to answer the final judgment, in the same manner as they would have been held to answer the final judgment had it been rendered by the court in which the suit was commenced. It shall be the duty of the clerk in said circuit court, within the time prescribed for filing said copies, to deliver to the person so seeking to remove said cause, upon being paid therefore five (5) cents per folio for making and certifying such copy, and in case the clerk of said court shall, upon demand and the payment or tender of his fees, refuse or neglect to deliver to such party certified copies of such record and proceedings, the superior court, on proof by affidavit that the said clerk has refused or neglected to deliver such copies thereof, on demand as aforesaid, shall direct and allow such record to be supplied by affidavit or otherwise as the circumstances of the case may require or allow, at any time within fifteen (15) days of the filing of such petition in the circuit court; and thereupon such proceedings, trial and judgment may be had in such superior court as if certified copies of such records and proceedings has been regularly before said

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court. Said cause shall be placed on the calendar of the superior court for trial by the clerk thereof, as soon as it is at issue.

APPENDIX J

CHANGE OF VENUE

Sec. 30. C. L. 1948, 727.30, M. S. A. 27.3640. The said "Superior Court of Grand Rapids," upon good cause shown may change the venue in any cause pending therein, upon the motion of either party in a civil cause, and in a criminal cause upon the motion of either the respondent, or the people, or the prosecuting attorney in behalf of the people, or by said court on his own motion, and direct the issue to be tried in the circuit court of Kent County, or of any other county of this state, and make all necessary rules and orders for the certifying and removing of said cause and all matters relating thereto to the court in which such issue shall be ordered to be tried; and the cause shall thereupon proceed, and the proceedings thereon shall be the same, as is now provided by law for the change of venue in any cause pending in the circuit courts of this state.

APPENDIX K

THE MAJORITY AND DISSENTING OPINIONS OF THE COURT BELOW

BEFORE THE ENTIRE BENCH, except Smith and Adams, J.J.

CARR, J.

The superior court of the city of Grand Rapids was created by, and organized pursuant to, P. A. 1875, No. 49. The Constitution of 1850 then in force and effect provided in article 6, § 1, thereof that:

"The judicial power is vested in one supreme court, in circuit courts, in probate courts, and in justices of the peace. Municipal courts of civil and criminal jurisdiction may be established by the Legislature in cities."

That the legislative action was taken pursuant to the permissive authority granted by the provision quoted of the then fundamental law of the State is apparent. The statute was entitled:

"AN ACT to provide for a municipal court in the city of Grand Rapids, to be called 'The Superior Court of Grand Rapids.'"

The provisions of the act were in accord with the general purpose set forth in the title. Notice of the election of the judge of the court was required to be given in the manner prescribed by law with reference to city officers. One elected to the office, under the statute as amended in 1881, entered on the performance of his duties on the first Monday of May next succeeding his election. Pursuant to amendment the clerk has been, and now is, appointed by the judge of the court for a term of two years. It is further provided by the statute, as amended, that the judge shall appoint a chief deputy clerk who shall also perform the duties of bailiff. Power of removal of said officers of the court is vested in the judge thereof. Other provisions of the statute clearly indicate the purpose of the legislature to establish a municipal court pursuant to the permissive authority granted with reference thereto by the State Constitution then in effect.

The plaintiff in the instant case served as judge of the superior court of Grand Rapids for a number of terms, retiring on May 4, 1959. Involved here is the question as to the amount of compensation that he was entitled to receive from the State during the last three of the 6-year terms served by him. The statute creating the court provided in section 6 thereof as originally enacted, and as subsequently amended, that:

"The judge of said superior court shall receive from the treasury of the State of Michigan the same annual salary as may be payable to circuit judges * * *."

The statute also authorizes additional payments to be made by the city of Grand Rapids pursuant to action of the legislative body thereof.

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The present action was instituted in the court of claims of the State, plaintiff seeking a declaratory judgment with reference to compensation that he asserted was owing to him but which State officials declined to pay. The petition was denied for reasons set forth in Taylor vs. Auditor General, 360 Mich. 146, and thereafter plaintiff's statement of claim was amended in such manner as to assert the right to a judgment for the aggregate of the alleged withheld payments. The amended claim, referring to the provision of section 6 of the act creating the superior court, above quoted, asserted that on the 10th of January, 1942, the annual salary of circuit judges, payable by the State, was fixed by legislative action at $7,000, that plaintiff was entitled to a like salary but was paid at the rate of $6,000 per annum until the first of May, 1947, when a new term began. Likewise, during such new term the annual salary of circuit judges was fixed at $9,000 but that plaintiff continued to be paid at the rate of $7,000 until the expiration of his current term of office and his entry on a new term in May, 1953. In August, 1954, the salary of circuit judges was fixed at $12,500 but the officers of the State charged with the duty of paying plaintiff's salary refused to make payments to him at the increased rate during the continuance of his then term of office. Plaintiff asserted that during the aggregate period in question he should have received from the State of Michigan the sum of $28,978.46 over and above the salary payments made to him. He sought judgment for that amount, together with interest, claiming that the officers of the State whose acts he questioned improperly determined the salary that he was lawfully entitled to receive.

The State contested plaintiff's right to the additional payments claimed by him, asserting that under article 16, § 3, of the present Constitution of the State plaintiff's salary could not be increased during a current term of office. Said section reads as follows:

"Neither the legislature nor any municipal authority shall grant or authorize extra compensation to any public officer, agent, employe or contractor after the service has been rendered or the contract entered into. Salaries of

public officers, except circuit judges, shall not be increased, nor shall the salary of any public officer be decreased, after election or appointment."

It was the contention of the defendants on the hearing of the matter in the trial court that plaintiff was not a circuit judge within the meaning of said section of the Constitution, that he was not entitled to the benefit of the specific exception made in favor of such judges, and that the payments that he claimed should have been made to him were forbidden by the Constitution. It was further pleaded by way of affirmative defenses that the statute of limitations barred all portions of plaintiff's claim asserted to have accrued prior to November 14, 1955; and that plaintiff, having failed to institute action or give notice of his intention to do so within a period of one year from the date his claimed cause of action accrued, as provided by section 11a of the court of claims act, was barred as to the portion of his said claim accruing prior to November 14, 1957.

Following a hearing the trial judge rejected defendants' claims and entered judgment for plaintiff in the aggregate sum of $39,190.58 with interest thereon at the rate of 5% per annum from November 15, 1960. From the opinion filed it would appear that the trial judge acepted plaintiff's theory that because of the nature of the jurisdiction vested in the superior court plaintiff was, from both a practical and legal standpoint, a circuit judge within the meaning of article 16, § 3, of the present State Constitution. Defendants have appealed from the judgment entered, asserting that the superior court of Grand Rapids is not a circuit court, that plaintiff during the period in question was not a circuit judge within the meaning of the term as used in the State Constitution, and that the statutory provision on which plaintiff relies that the State shall pay him the same salary as is paid to circuit judges cannot be given the force and effect of rendering inapplicable the specific prohibition of article 16, § 3.

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*C. L. 1948, § 691.111a (Stat. Ann. 1959 Cum. Supp. § 27.3548 [11½]).

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As before suggested, there is nothing in the act creating the superior court of Grand Rapids or in subsequent amendments thereto, including P. A. 1877, No. 147, indicating that the legislature of the State has at any time regarded said court as a circuit court. The title of the act of 1875 is significant in this regard, and that title has never been changed. There can be no question as to the provision of the Constitution of 1850 on which the legislature relied in providing for a municipal court in Grand Rapids. The status of said court was involved in several cases arising shortly after its organization, among which are Heath vs. Kent Circuit Judge, 37 Mich. 372; Allen vs. Kent Circuit Judge, 37 Mich. 473; Grand Rapids, Newaygo and Lake Shore Railroad Company vs. Gray, 38 Mich. 461. In the latter case the Court, after referring to article 6, §1, of the Constitution of 1850, said:

"It is also clearly apparent that each circuit, as contemplated in and provided for by the constitution, should include at least one county, and that at no time could there be more than one circuit court in a county or a circuit and a county court in the same county. It must however have been a matter considered by the members of the Constitutional Convention, engaged as they were, in the preparation of a judicial system permanent in its character, that a necessity might thereafter arise in some circuits, to relieve them from a part of their business; that in the growth and development of the State, cities would be springing up, in which, owing to the large manufacturing, mercantile and other business carried on and transacted therein, considerable litigation might be expected to arise, and that the circuit court of the county in which such city or cities were situate, would be inadequate to meet the growing demands made upon it in a prompt and satisfactory manner, and that it might therefor at some time become necessary to establish one or more courts in particular cities to relieve the circuit of a portion of the business, and that with this object and purpose in view the clause in question authorizing the legislature to establish municipal courts in cities was inserted.

"There was not however, in my opinion, any intention, by the insertion of this clause, to destroy or materially

change or affect the jurisdiction conferred upon the circuit courts, or any of them, or that such municipal courts when established, should have a jurisdiction, territorially, in any class of cases, co-extensive with the limits of the county, much less of the entire State. They were in my opinion intended for the benefit of and to meet the wants of the city in which they were established."

In Dunham vs. Tilma, 191 Mich. 688, the question arose as to whether the judge of the superior court of Grand Rapids was entitled to receive during his current term an increase in salary sought to be made by the common council of Grand Rapids. An action of mandamus was instituted against the comptroller of the city to compel him to recognize the increase. It is interesting to note that essentially the same question was raised on behalf of the plaintiff as in the instant case. Specifically it was claimed that the establishment of the superior court of Grand Rapids was not the creation of a new court "but merely a division and continuation of an already established court — the circuit court for the county of Kent — and a carving out therefrom, and a division of the jurisdiction thereof, on a territorial basis." This Court in a unanimous opinion written by Justice Person rejected the claim made, pointing out that if it were well-founded the superior court without any grant from the legislature would possess all the powers vested by the Constitution in circuit courts. It was emphasized, however, citing Nichols vs. Judge of Superior Court, 130 Mich. 187, that municipal courts derive their powers from legislative action and that without reference to the extent of such powers they still remain municipal courts. Covell vs. Treasurer of Kent County, 36 Mich. 332.

The opinion in Dunham vs. Tilma further emphasized the fact that the superior court of Grand Rapids was professedly organized as a municipal court. It was pointed out that judges of circuit courts may fill vacancies in the office of county clerk or prosecuting attorney, and that the clerk of the county is the clerk of the circuit court for such county. No claim is or can be made that the judge of the superior court of Grand Rapids has any such power of appointment, or that the county clerk is the clerk there-

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of. Dunham vs. Tilma was quoted and followed in Mooney vs. Unemployment Compensation Commission, 336 Mich. 344, in which it was held that a statutory provision granting a right of review by writ of certiorari from circuit court did not vest jurisdiction in the superior court of Grand Rapids, jurisdiction to the municipal court not having been specifically granted by the legislature.

While plaintiff herein was serving his last term as judge of superior court the legislature by P. A. 1954, No. 155, increased the salary of circuit judges to $12,500 per annum. Relying on the same statutory provision that is invoked in the present case, plaintiff instituted mandamus proceedings in this Court to compel the auditor general to issue payroll vouchers increasing his salary to conform to that paid to judges of circuit courts. Taylor vs. Auditor General, 342 Mich. 265. The defense to the action was based on article 16, § 3, of the State Constitution. In sustaining the defense it was said:

"The provision of the Constitution is clear. The legislature cannot fix plaintiff's salary by reference and thus circumvent the express constitutional inhibition against the increase of plaintiff's salary during term. He is not a circuit judge, does not come within the plainly worded exception to the constitutional inhibition, and his salary cannot be increased during term."

It would seem to be unnecessary to pursue further the discussion as to whether the superior court of Grand Rapids may be regarded as a circuit court and the judge thereof classified as a circuit judge within the meaning of article 16, § 3, of the State Constitution. The answer to the query does not lie in the similarity of powers, subject to exceptions and territorial restrictions, but basically rests on the fact that circuit courts are invested by the fundamental law of the State with powers of which they cannot be deprived by legislative action, while the extent of jurisdiction of municipal courts is a matter subject to legislative control, under constitutional provisions pertaining to such functions and to the exercise of the legislative prerogative. As appears from the language of the act creating it, from amendments thereto, and from decisions

of this Court relating to the matter, the superior court of Grand Rapids was created under the grant of authority to the legislature to establish municipal courts in cities. We cannot avoid the conclusion as expressed in prior decisions of this Court that the judge of the superior court of Grand Rapids may not be regarded as a circuit judge and as such within the exception set forth in the constitutional provision here involved. On the contrary, he is subject to the general inhibition of that provision and his salary may not be increased during his term of office on the theory that he is either legally or factually a circuit judge.

This brings us to a consideration of the question as to the practical effect of section 6 of the act of 1875 creating the superior court of Grand Rapids. That act provided, as does the amended statute, that the judge of the superior court shall receive from the State of Michigan the same annual salary as may be payable to circuit judges. It is the claim of the plaintiff in substance, which claim the trial judge apparently accepted, that this provision of the statute constitutes the establishing of a formula pursuant to which compensation of the superior court judge is to be determined from time to time. Reliance is placed on decisions from other States involving statutes fixing compensation to be paid to certain public officials on the basis of population.

Typical of such decisions is State vs. Guckenberger, 139 Ohio St. 273 (39 N.E. 2d 840). Involved there was a State statute undertaking to fix additional compensation for a judge of a court of common pleas on the basis of 3 cents per capita for the first 50,000 population of the county of residence at the time of election or appointment, as ascertained by the Federal census. It was held that a change in population would entitle the incumbent of the office in question to an increase in salary during his term if it was established by the census that the population had increased to such an extent as to authorize it. A constitutional provision against increasing salaries during terms of office was held not applicable. Of like import are Crowe vs. Board of Commissioners, 210 Ind. 404 (3 N.E. 2d 76); State ex rel. Harvey vs. Linville et al., 318 Mo. 698 (300 S.W. 1066); Puterbaugh vs. Wadham, 162 Cal. 611 (123

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P. 804). In the above cited decisions, however, it appears that no legislative action claimed as the basis for an increase in compensation during a current term of office was involved. In the case at bar the situation is otherwise. Each increase in the salary of circuit judges, from which plaintiff claims the right to benefit, was due directly to legislative action. We are not, in other words, dealing with a formula resting on the basis of a change in population, an increase or decrease in assessed valuation, or other analogous factor. If plaintiff is entitled to the various increases that he claims in this proceeding it is by virtue of the fact that the legislature spoke and that its action in so doing required the payment to him of increased compensation during his term of office. Such an increase would be as much due to legislative action as though stated in specific language.

Reliance is placed by plaintiff on the decision of the supreme court of Colorado in Blakeley et al vs. People ex rel. Madden, 104 Colo. 206 (89 P. 2d 1015). That was a proceeding in mandamus to require the payment of additional salary to the judge of the juvenile court of the city and county of Denver. For some years a salary of $4,000 per annum had been paid. On June 7, 1937, there became effective an act of the legislature fixing the salary of district judges at $5,000 per annum. By prior act of 1923 payment to juvenile court judges of a salary not less than that received by district judges was directed. Relying on said act plaintiff in the case claimed that the increase of the salary of district court judges to $5,000 automatically increased his pay to the same amount during his current term. The defendants relied on a provision of the State Constitution directed against an increase or decrease in the salary of any public officer, after election or appointment, as fixed by legislative enactment. The constitutional provision in question was adopted in 1928. Commenting thereon the majority opinion in the case deemed it reasonable to infer that the voters in adopting the amendment believed "that authorized change in salaries of district judges, when made, would work immediate like result as to the salary of the judge of the juvenile court." It would appear therefore that the Colorado court, in upholding the claim of the plaintiff that he was entitled

to the increase in salary, did so on the basis of an assumption that the people had adopted the constitutional provision after the statute had been adopted in 1923 in the belief or on the theory, that the statute would control and that the prior existing status would continue. It is significant that two members of the court dissented, expressing their reasons for dissent in the following terse statement:

"I think the court's opinion sanctions not only amendment of the Constitution by indirection and implication, but amendment by the legislature. My reason for that conclusion, to which I think no answer has been made, may be thus briefly stated: There is not a word in the Constitution about a juvenile judge or his salary. Hence if he has any salary it must be provided solely by statute. During every minute that court has been in existence the Constitution has forbidden the application of changes in salaries so fixed to persons then in office. This judge was in office when the statute was passed, hence he can not take the increase during that term."

Whether the assumption on which the majority of the members of the Colorado court apparently relied was properly made does not require discussion. It is certain in the instant case that the interpretation of article 16, § 3, of the Michigan Constitution does not involve any such consideration. The Constitution of 1850 provided in section 20 of the schedule thereof that "it shall not be lawful hereafter for the Legislature to increase or diminish the compensation of any officer during the term for which he is elected or appointed." This provision remained in force until the effective date of the present Constitution, January 1, 1909. Up to that time it was not within the power of the legislature to increase the salaries of circuit judges, or the salary of the judge of the superior court of Grand Rapids, effective during current terms of office. If we assume, as the trial court suggests in his opinion, "that Section VI of Act 49 of the Public Acts of 1875 was in the minds and intelligence of the delegates to the convention of 1908" the query naturally suggests itself why specific mention was not made in article 16, § 3, of the superior court judge. That was not done and

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there is no basis for any inference that an unexpressed inclusion was intended. The sole authority cited in support of plaintiff's position as to the effect to be given to section 6 of the act of 1875 is the holding of the majority of the Colorado court, which holding we decline to follow.

The conclusion reached on the principal questions at issue render it unnecessary to consider the arguments of the defendants with reference to the statute of limitations and the failure to observe the requirements of the court of claims act with reference to the time of notice of an intent to file a claim and the filing of such claim.

The case is remanded to the trial court with directions to set aside the judgment entered and to render judgment in favor of the defendants.

Dethmers, Kelley, Souris, concurred.

BEFORE THE ENTIRE BENCH except Smith and Adams, J.J.

BLACK, J. (for affirmance)

> "What can we know? or what can we discern,
> When error chokes the windows of the mind?"
>
> (Sir John Davies, The Vanity of Human Learning, stanza 15).

Our unintentional yet grievous error, committed in 1955 against faithfully deserving Judge Thaddeus B. Taylor (Taylor vs. Auditor General, 342 Mich. 265), really does choke the windows of some minds here. There is no other rational way to account for the presently proposed opinion for reversal of this eminently rightful judgment of the court of claims.

Finally, after 7 years of admirable patience and dogged perseverance, Judge Taylor has forced us to consider and treat that pat authority and established principle (found particularly in Blakeley vs. People, 104 Colo. 206, 89 P. 2d 1015) he has righteously relied upon ever since filing — September 29, 1954 — of his original petition for mandamus. After 3 entreaties by Judge Taylor (Taylor vs. Auditor General, supra, decided April 14, 1955; Taylor

vs. Auditor General, 360 Mich. 146, decided June 6, 1960, and now Taylor vs. State) we will have forthrightly done something at least, that is to say, this Court will have faced up to the precedent Blakeley supplies for dovetail with our own similarly snubbed case of People vs. Reigel, 120 Mich. 78. I shall refer to such principle as that which is made when the constituted legislative body ordains that the amount of salary a to-be-elected-or-appointed public officer is to receive, in whole or in part during his term, shall be determined according to a readily ascertainable "fluctuating factor." (The expression is taken from presently quoted O. A. G. 1951-52, p. 38, No. 1269).

As this point, farsing with due process, I insert a manifestly fair question: Were the presently considered Blakeley, Guckenberger, Crowe and Reigel Cases examined *at all* by the Court when the first Taylor Case was considered and decided in 1955? Although cited and stressed on each occasion (Taylor 1955 and Taylor 1960),* Blakeley in particular was ignored by majority opinion signers, so far at least as the official opinions disclose. On both occasions the Court deigned no recognition or treatment of the easily understood aphorism that legislatures may and occasionally do, with Constitutional propriety, provide for prospective and during-term escalation of the salaries of public officers by acting and enacting *prior to election for the official term in question.* And no regard (again as far as the official opinions disclose) seems to have been given that vital word "annual" which, prior to and throughout all of Judge Taylor's elective terms and continuous years of service (1932-1959), appeared in the *only statute which authorized payment to him of any salary whatever from Michigan's treasury.* A man cannot receive "the same annual salary" another receives unless he receives the same amount annually. And he assuredly does not receive the same amount annually when the other's received amount fluctuates regularly npward as his received amount remains stationary.

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*Starting on page 15, Judge Taylor's 1955 brief devoted 6 full pages to discussion and quotation of then-scorned Blakeley.

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First: Present is a fact — a *controlling* fact — which makes for unerring decision of this case if we will but let it shine through the "windows" of the judicial mind. It is that the legislature has exclusively provided, continuously for more than 85 years, that the judge of the superior court of Grand Rapids "shall receive from the treasury of the State of Michigan the *same annual salary* as may be payable to circuit judges" (See section 6 of the act of 1875 and notes of amendments, C. L. 1948, §727.6). The phrase reads now, in full (C. L. S. 1956, §727.6):

"Sec. 6. The judge of said superior court shall receive from the treasury of the state of Michigan the same annual salary as may be payable to circuit judges, and payable in the same manner as are circuit judges."

If the legislature had constitutional power to enact such a statute, and the Chief Justice carefully refrains from denial of such power, then we have before us no more than a question of statutory interpretation, with respect to which the following is submitted. The Chief Justice says:

"If plaintiff is entitled to the various increases that he claims in this proceeding it is by virtue of the fact that the legislature spoke and that its action in so doing required the payment to him of increased compensation during his term of office."

Here we agree and square off. I say the legislature *did* speak, exactly as in Blakeley and for many more continuous years prior to all of Judge Taylor's term-tenures; that by its action of 1875 and the successive statutes authorizing increases of State-paid salaries for circuit judges the legislature *did* authorize and require the payment to Judge Taylor of the correspondingly increased compensation Judge Fox awarded him in the court below.*

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*Indeed, during all his years of tenure, no statute excepting said section 6 determined the *amount* of salary Judge Taylor should receive from the State treasury.

Now let Blakeley speak. The facts are identical. All of the writing Justices — not just the majority — held to the only permissible legislative intent, arising from said section 6 (including that word "annual"). What the seven man court did differ upon, 4 to 2 with 1 Justice not participating, was the constitutional question arising from the same no-increase no-decrease provision which appears in the constitutions of Colorado and Michigan. To make our record clear upon this point I quote here the entire *dissenting opinion* of Justices Burke and Bock, which *dissent* the Chief Justice, ignoring all extant authority including Reigel, supra, would have us adopt (1019 N.R. citation):

"I dissent. I think the court's opinion sanctions not only amendment of the constitution by indirection and implication, but amendment by the Legislature. My reason for that conclusion, to which I think no answer has been made, may be thus briefly stated: There is not a word in the constitution about a juvenile judge or his salary. Hence if he has any salary it must be provided solely by statute. During every minute that court has been in existence the constitution has forbidden the application of changes in salaries so fixed to persons then in office. This judge was in office when the statute was passed, hence he can not take the increase during that term."

When Blakeley came to consideration, and for 11 years prior thereto, Colorado's constitution provided: "No law shall extend the term of any public officer, or increase or decrease his salary, after his election or appointment, as

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*Courts usually follow *majority* rather than *minority* opinions, especially when the former appear as having been the subject of greater care and are supported not only by separate and respectable opinions of complete concurrence but also by the clear weight of reasoned authority. For such clear weight and pronouncement thereof, see State vs. Guckenberger, post.

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fixed by legislative enactment" (art. 5, §30). It was shown that the salary of the office of the petitioner judge* was originally fixed, by enactment in the year 1907, at the sum of $4,000 per year; also that, prior to his election (in 1936), the salary of such office was continuously tied to that of the district judge or judges of the county by an act of 1923 providing that the judge of his court "shall receive an *annual* salary of not less than that received by the district judge or judges of such county." It was shown further that the salaries of such district judges were raised in 1937, from $4000 per annum to $5000 per annum, and that the respondent fiscal officers refused to pay the petitioner at the higher rate. The respondents relied of course, as do the defendants here, on the mentioned no-increase no-decrease provision. The majority ruled (p. 1016, 1017 N. R. citation):

"If it may be said that relator's salary was fixed in the sense of sum or amount at the time of his election, then on authority of Carlile vs. Henderson, 17 Colo. 532, 31 P. 117, and Henderson vs. County of Boulder, 51 Colo. 364, 117 P. 997, called to our attention by counsel for respondents, the contention that there was error below would be sound; and had the act of 1907 remained unchanged, the essential fixity of salary would be manifest. But in 1923, as we have seen, the legislature amended the 1907 act in the matter of the salary of the judge of the juvenile court by tying it, as to amount, to the salary of district judges. The language is, that the judge of the juvenile court 'shall receive an annual salary of not less than that received by the district judge or judges' of his county. Clearly, as we conceive, the legislature intended that the salary of the judge of the juvenile court (unless, indeed, county authorities should voluntarily pay a larger salary) shall at all times correspond with, and be not less than, that which the

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*Judge Madden, the petitioner in mandamus, held the office of judge of the juvenile court of the city and county of Denver.

state pays its district judges; and only in that sense did the act of 1923 fix the salary of the judge of the juvenile court. Until the 1923 act, the act of 1907 made full revelation as to the amount of salary of the judge of the juvenile court. But when the act of 1923 became effective the amount of such salary was ascertainable only by an examination of that act *and* whatever law fixed the amount of salary of district judges. The process of ascertainment necessarily was a continuing one; that is to say, to cognize the salary of the judge of the juvenile court at any given time, resort must be had to the law in relation to the salary of district judges then in force."

Justice Young, concurring unreservedly and specially declared his conviction this way (pp. 1017, 1018, N. R. citation):

"If the amount he [the judge] is to receive is definite and certain and fixed in dollars and cents, the officer is entitled to receive the specific amount so provided, no more and no less, regardless of any legislative change in the amount made after his election or appointment. If the compensation he is to receive depends on a contingency, as for example, upon the amount of fees he shall receive when fees are fixed and the officer is allowed to retain them, then the compensation as to the manner of its determination, is fixed, though as to the amount actually to be received it is contingent. One entering upon such an office does so with his compensation fixed though the amount he will receive in dollars and cents is uncertain." • • •

"The effect of section 30, article V is to give to the elected or appointed official a vested right to all the compensation that he may receive by virtue of the law providing for his compensation at the time of his election or appointment to office. If the law in force at that time is such that the compensation may vary by reason of the happening of reasonable contingencies, there is vested in the official the right to increased benefits that may accrue, and there is imposed upon him the burden of diminished benefits which may result as the contingencies do or do not arise."

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Now let us ascertain whether the truncated reasoning of Justice Burke's dissent accords with the weight of authority; in fact with what this Court approved many years ago. First let us examine O. A. G. 1951-1952, No. 1269, mentioned above. On that occasion attorney general Roth, later circuit judge of the 7th circuit and now a distinguished member of the bench of the United States District Court for the Eastern Division of Michigan, adopted the reasoning of Crowe and Guckenberger, both supra. Having first quoted Crowe (which Guckenberger later quoted with approval) as follows:

"In Crowe v. Board of Commissioners, 210 Ind. 404, 408 (3 N.E. 2d 76, 77), also quoted with approval in the Guckenberger Case [State, ex rel. Mack v. Guckenberger 139 Ohio St. 273, 285, 286 (39 N.E. 2d 840, 139 A. L. R. 728]), the court said:

" 'There is no merit in the contention that an increase in the salary of an officer during his term is involved. The salary was fixed before he was elected. The amount he was to receive from time to time was made to depend upon the population of the county. It is as though the statute in existence when the officer was elected had provided that he should receive $1,000 the first year and $2,000 the second year of his term. In the statute under consideration the legislature chose to make the amount of salary dependent upon population shown by the United States census. It might continue during the latter part of the term the same as before the census. It might be more if the population increased. It might be less if it decreased.' ";

attorney general Roth concluded:

"In my judgment this view is sound and would prevail in this State should the question ever reach our Supreme Court. Consequently, *so long as a salary, dependent in amount upon a fluctuating factor such as population, is provided for by a statute effective prior to election or appointment of any public officer such officer may receive salary increases due to changes of the salary factor without there being a violation of Const. 1908, art. 16, §3. Indeed, the salaries of judges of probate have been so determined for some time.*"

The reasoning of O. A. G. No. 1269 was expressly followed by Justice Kavanagh (then as attorney general) in 2 O. A. G. 1955-56, p. 726, No. 2822.* See also O. A. G. 1951-52, p. 61, No. 1284, wherein attorney general Roth held that "a majority of the jurisdictions in which the question has been decided have taken the view that such constitutional provisions [no-increase no-decrease provisions] do not prohibit automatic salary changes dependent upon future events if the laws so fixing salaries are seasonably enacted."

Let us come now to our own decision of Reigel, supra. There the defendant, once Bay county treasurer, was found guilty of embezzlement for having drawn and retained, over and above his precedently fixed regular salary, certain collection fees which the county board of

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*In O. A. G. No. 2822 the posed question was:

"Having in mind the provisions of section 3, article XVI of the Michigan Constitution, is it legally sound to fix the annual salary of an official in a different amount for each year of his term of office, effecting an increase year by year? By way of example let us suppose that the Board of Supervisors fixed the salary of an official holding a 4 year term of office at $3,000 payable during the first year of his office, $4,000 payable during the second year of his office, $5,000 payable during the third year of office, and $7,000 payable in the final year of his office."

Attorney General Kavanagh answered:

"In the case you now put, we assume that the salary is being fixed before the election or appointment of the officer. We believe that the reasoning of the prior quoted opinion applies, and that since the amount of the salary is fixed prior to his election or appointment, there is no increasing of salary within the term. Although the amount of salary actually to be received is subject to successive annual raises, the increases are fixed by the proper body before election or appointment, rather than during the period in which the office is held."

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supervisors had resolved in his favor. The board's action was taken by resolution to approve the following report:

"Your committtee on ways and means, to whom was referred the matter of the salaries of the county officers, have had the same under consideration, and would recommend that the salaries of the various county officers be as follows for the next two ensuing years: For county treasurer, $3,800, and collection fees on liquor and other taxes."

The trial judge ruled that "the effect of this resolution was to fix the salary of the treasurer at $3,800 and the collection fees of liquor taxes, given to treasurers by statute, and it was void as to the 4 per cent collection fees on taxes collected." A directed verdict of guilty followed, and the defendant appealed. This Court held, as against a typical no-increase no-decrease provision, effected by statute*:

"We are not satisfied that it [the statute] was intended to have the effect stated, and think that it was intended to prevent changes in salaries following the election of officers, before the beginning of or during their terms. We see no reason for saying that it was intended to abrogate section 527, or to affect it, except as it forbids changes during an official term. It is apparent that the amount of the salary fixed in this instance was indefinite and uncertain in a sense, because liable to be increased or diminished through variations in the amount of the collection fees. But the statute was designed to prevent repeated or untimely action by the board, and not to prohibit a method of fix-

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*1 How. Stat. §508, reading:

"The annual salaries of all salaried county officers which are now, or may hereafter by law, fixed by the board of supervisors, shall be fixed by said board on or before the thirty-first day of October prior to the commencement of the term of such officers, and the same shall not be increased or diminished during the term for which such officers shall have been elected or appointed."

ing the salary which should make the amount contingent upon the work done, and which has already been approved, provided the resolution fixing the salary should state the rule by which the amount should be determined."

The Chief Justice ignores such reasoning. He does not even mention the Reigel Case. Yet here, as in that case, the *amount* of Judge Taylor's precedently ordained state-paid compensation was "indefinite and uncertain in a sense" because it by an old and standing statute was liable to be increased, during each of his elective terms, *on account of constitutionally permitted during-term increases of the state-paid salaries of circuit judges.* (All such judges, of superior and circuit courts, are simultaneously elected for identically co-extensive six-year terms). Note especially from Reigel that the no-increase no-decrease provision did not prohibit a method of fixing the involved salary by making the amount contingent upon ascertainable future events when and if such events should occur.

The thoroughly reasoned and leading case of State vs. Guckenberger, 139 Ohio St. 273 (39 N.E. 2d 840) has guided our attorneys general to their quoted holdings. Such holdings have determined — for at least a decade — the right of many Michigan public officers to receive, as they have since received, salaries according to various fluctuating factors fixed by ahead-of-election legislation. Such legislation effects a valid legislative purpose. Guckenberger tells why (p. 843 N. R. citation):

"The purpose of the constitutional inhibition now under consideration is to make sure that the judge and the electorate are advised before he is appointed or elected what his compensation will be, with the assurance that it cannot be changed by the Legislature during the term; that the judge is precluded from using his personal influence or official action to have the Legislature increase his salary; and that at the same time he is protected against the Legislature and the people from decreasing his compensation after his term begins. These same salutary purposes are fully and effectually preserved by the terms of the present statute, albeit the compensation of the judge

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is made variable, from and after the last federal census becoming effective during his term."

Judge Fox (sitting below; since appointed to the District Court bench of the United States) propounded a visibly roguish test of the validity of such legislatively provided fluctuating factor. Citing Crowe, Guckenberger and Reigel as authority for upholding his answer, Judge Fox said:

"Let us suppose, for example, that the legislature, in 1945, passed an act which provided —

"Justices of the Supreme Court shall receive from the treasury of the State of Michigan an annual salary of $1,000 in excess of the highest salary paid to judges of the Third Judicial Circuit (Wayne county, including Detroit).

"It occurs to me that such a predetermined formula would be valid and binding under the Constitution of the State of Michigan."

Would that such a question were here, in company with this latest case of Taylor. With our sole right to compensation furnished by, and tied exclusively and precedently to the regularly upgraded salaries of the judges of the 3rd circuit, *one might politely inquire whether any seated Brother then would choose Blakeley's minority dixit over what a visibly thoughtful majority wrote.*

A hard decision, that. By Blakeley's dissent there really would be salary trouble for the Supreme Court of Michigan. Let us never forget, just as the dissenters noted in Blakeley concerning Judge Madden's office and salary, that in Michigan "There is not a word in the Constitution" requiring payment of *any* salary to Michigan Supreme Court Justices. The people seemingly forgot about the matter of our compensation when they conceived and approved the Constitution of 1908.

What really is before us? In the words of Justice Holmes' most notable dissent (Northern Securities Co. vs. United States, 193 U. S. 197, 401), "What we have to do in this case is to find the meaning of some not very difficult words." The words are "same annual salary as

may be payable to circuit judges." All we need do — this is Holmes again, same page — is "to read English intelligently."

Second: Referring to Dunham vs. Tilma, 191 Mich. 688, the Chief Justice says that "It is interesting to note that essentially the same question was raised on behalf of the plaintiff as in the instant case." Respectfully, I disagree. The same question was not raised in Dunham, "essentially" or otherwise. Dunham dealt with the specific question whether, *during and applicable to the then elective term of the superior court judge, the common council* of Grand Rapids lawfully increased *the city-paid portion of the judge's salary* (not the state-paid portion which, as we have seen, was then and there governed as to amount by said section 6). There being no extant statute tying the judge's *locally contributed portion of salary* to some "fluctuating factor," the Court properly ruled that the common council had violated the no-increase no-decrease provision of said article 16. Dunham does not even mention the state-paid portion of the judge's salary. Nor does it deal with said section 6.

Third: Throughout the opinion proposed by the Chief Justice the superior court is subtly downgraded to the status of a "municipal" court. Once indeed it may have been such, during the 19th century when the Constitution confined the legislature to establishment of "municipal" courts "in cities" (Const. 1850, art. VI, section 1). But things do change, of necessity and also by law. The corresponding section of today's Constitution, conjoined with today's municipal law, through which the territorial jurisdiction and so the burdens of the superior court continue at quickening pace to expand outward in every direction over Kent county, authorize legislative establishment and maintenance of courts "inferior to the supreme court." (Const. 1908, art. VII, section 1). The words "municipal" and "cities" were eliminated in 1908, and there is no doubt now that the jurisdiction and powers of the superior court are equal to those of our circuit courts. As in circuit, the judgments and decrees of the court are reviewable only by this Court. Provision is made for automatic transfer to it of cases which, if originally within its concurrent territorial jurisdiction, have been commenced in the

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Kent circuit (C. L. 1948, §727.21). The rules of practice and procedure prescribed for the court are the same (C. L. 1948, §727.15; Court Rule No. 1). The elective term of the judge is the same as that of our circuit judges and, if the legislature meant what it said, the state-paid salary is intendedly the same. It is a circuit court in fact which the legislature may, at any time with constitutional sanction, dub "the circuit court of Grand Rapids" rather than "the superior court of Grand Rapids."*

"The jurisdiction of the [superior] court is defined by section 13, as amended. It has original and concurrent jurisdiction with the circuit court for the county of Kent, and within its territorial limits the jurisdiction conferred is as extensive and broad as that of the circuit court." Attorney General vs. Renihan, 184 Mich. 272, 275.

CONCLUSION

This is the third and final occasion when a distinguished veteran of Michigan's judiciary will have appeared before us in effort to obtain his fully earned due. Having been burdened with the judicial power "to do all lawful acts which may be necessary and proper to carry into complete effect the powers and jurisdiction given by this act, and especially to issue all writs and process, and to do all acts which the circuit courts of this state, within their respective jurisdictions, may in like cases issue and do by the laws of this state" (quotation from original and present section 13 of the act of 1875; C. L. 1948, §727.13); having borne, during the 1940's and early 1950's, quite a share (in addition to the work of his own court) of the work which, but for continued illnesses of elder Kent circuit judges, would normally have been processed by such judges, and living now in precarious health on borrowed time, Judge Taylor asks no more than what by law was

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*"The superior court of Grand Rapids is a court of record having original jurisdiction concurrent with the circuit court for the county of Kent, as provided in 3 Comp. Laws 1929, §16351." Youdan vs. Kelley, 267 Mich. 616, 619.

owing to his office from and after each of the circuit court salary increase acts of the 1940's and 1950's. Tribute to his unflagging attention to duty, and to the continuously enviable condition of his docket, has been paid regularly by the statistics and annual reports of the court administrator.* Unless appellate error — once committed — must always be denied by the nnwitting perpetrators thereof, we have no good reason to deny him the judgment which, at long last in the court of claims, he has rightfully won.

During the darkest hours of the Civil War President Lincoln wrote (August 22, 1862), to his old friend Horace Greeley:

"I shall try to correct errors when shown to be errors, and I shall adopt new views so fast as they shall appear to be true views." (Life and Works of Abraham Lincoln, "Letters II"; page 45, Centenary Edition, 1907).

A good thought for judges as well as Presidents.
I vote to affirm and therefore dissent.

Kavanagh concurred.

APPENDIX L

JUDGMENT BELOW

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN. Held, at the Supreme Court Room, in the Capitol, in the City of Lansing on the 7th day of September in the year of our Lord one thousand nine hundred and sixty-two.

Present the Honorable: Leland W. Carr, Chief Justice; John R. Dethmers, Harry F. Kelley, Eugene F. Black, Thomas Kavanagh, Theodore Souris, Associate Justices.

This cause having been brought to this court by appeal from The Court of Claims, and having been argued by

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*See 1957 report of the court administrator, p. 29, and his 1958 report, p. 43.

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counsel, and due deliberation had thereon, it is now ordered by the court, that the judgment of The Court of Claims be and the same is hereby reversed and the cause is remanded to the trial court with directions to set aside the judgment entered and to render judgment in favor of the defendants. Justices Smith and Adams did not participate.

STATE OF MICHIGAN — SS.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause, that I have compared the same with the original, and that it is a true transcript therefrom and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Supreme Court at Lansing this 13th day of November in the year of our Lord one thousand nine hundred and sixty-two.

Donald F. Winters,
(SEAL) Clerk.

APPENDIX M

ORDER DENYING MOTION FOR RE-HEARING

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 5th day of November in the year of our Lord one thousand nine hundred and sixty-two.

Present the Honorable: Leland W. Carr, Chief Justice; John D. Dethmers, Harry F. Kelley, Eugene F. Black, Thomas M. Kavanagh, Theodore Souris, Otis M. Smith, Paul L. Adams, Associate Justices.

A motion for re-hearing having been heretofore submitted herein, it is hereby, DENIED.

STATE OF MICHIGAN — SS.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause, that I have compared the same with the original, and that it is a true transcript therefrom and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Supreme Court at Lansing this 7th day of November in the year of our Lord one thousand nine hundred and sixty-two.

Donald F. Winters,
Clerk.

APPENDIX N

PAGE 1 PLAINTIFF AND APPELLEE BRIEF

COUNTER-STATEMENT OF QUESTIONS INVOLVED

Part I.

1. Does the defendant-appellant admit the ten claims made by plaintiff-appellee, in his motion for judgment on the pleadings?

The trial court answered — "Yes."
Plaintiff and appellee claims that the answer is correct.

2. Is the Superior Court of Grand Rapids and the Judge of said Court of the same judicial class as the Circuit Court and Circuit Judges?

The trial court answered — "Yes."
Plaintiff and appellee claims the answer is correct.

3. Does the exception in Art. 16, Sec. 3 "Except Circuit Judges" in the constitution of the State of Michigan conflict with Art. 2, Sec. 1 of said constitution, and is it in violation of the 14th Amendment of the Constitution of

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the United States, if said exception is construed as excluding Judges of the Superior Court of Grand Rapids, from such privilege, they being of the same class as Circuit Judges?

The trial court did not discuss or answer this question. Plaintiff and appellee claims the answer should be — "Yes."

4. Was the judgment of the Supreme Court in Taylor vs. Martin, 342 Mich. 265 in violation of Art. 2, Sec. 1 of the constitution of the State of Michigan and in violation of the 14th Amendment to the Constitution of the United States, denying to said plaintiff judge, of the same class as a circuit judge, equal protection of the law?

The trial court did not answer or discuss this question. Plaintiff and appellee claims the answer should be — "Yes."

STATE OF MICHIGAN: SS.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of page 1 of the plaintiff's and appellee's brief filed in this court in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing this 13th day of November in the year of our Lord one thousand nine hundred and sixty-two.

Donald F. Winters,
Clerk.